In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 18, ORIGINAL

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ARIZONA, DEFENDANT

APPLICATION FOR AN ORDER TO SHOW CAUSE WHY A RESTRAINING ORDER SHOULD NOT ISSUE

Comes now the United States, plaintiff in the above cause, by its Attorney General and its Solicitor General, and upon the bill of complaint herein and upon the attached affidavit of Elwood Mead, Commissioner of the Bureau of Reclamation, respectfully prays this Honorable Court to issue an order directing the defendant, The State of Arizona, to show cause, upon the earliest date convenient to the court, why an order should not issue restraining all interference by the defendant, the State of Arizona, its officers, agents, and employees, with the construction of Parker Dam pending the final determination of this action, as prayed in the bill of complaint.

HOMER S. CUMMINGS,
Attorney General.

J. CRAWFORD BIGGS,
Solicitor General.

January 1935.

108809—35

STATEMENT IN SUPPORT OF APPLICATION

The motion for leave to file the bill of complaint in this action was granted by the court on the 14th day of January 1935. Process was made returnable April 1, 1935.

The bill of complaint (Par. XIII) presented five prayers as follows:

> (a) That the defendant, the State of Arizona, be required to appear and answer this bill of complaint and therein to specifically set forth the nature and extent of its asserted right to interfere with the construction by the United States of said Parker Dam.
>
> (b) That any and every such asserted claim of right be adjudged and decreed to be null and void.
>
> (c) That all interference and threatened interference by the State of Arizona, its officers, agents, and employees, with the construction of Parker Dam be restrained pending the final determination of this action.
>
> (d) That the defendant, the State of Arizona, its officers, agents, and employees, be forever enjoined from interfering in any manner whatsoever with the construction, operation, and maintenance of Parker Dam and appurtenant works by the United States, its officers, agents, and employees.
>
> (e) That the plaintiff, the United States of America, have such other and further relief as it may be entitled to in equity and good conscience.

The United States will suffer irreparable injury unless the obstruction and interference by the defendant, the State of Arizona, complained of in the bill of complaint, is restrained pending the return of process and further proceedings in this cause. Unless the defendant, the State of Arizona, its officers and agents, are prevented from interfering with the construction and operation of said Parker Dam the constitutional power and authority of the United States in respect to the control of navigable rivers in aid of navigation, and the use thereof in the creation of public works for the material advantage and benefit of the public, will thereby be defeated and set at naught.

J. CRAWFORD BIGGS,
Solicitor General.

January 1935.

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 18, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ARIZONA, DEFENDANT

AFFIDAVIT OF ELWOOD MEAD, COMMISSIONER OF THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, IN SUPPORT OF THE APPLICATION

DISTRICT OF COLUMBIA, *ss.*

Elwood Mead, being first duly sworn, deposes and says that:

He is now and for several years last past has been the Commissioner of the Bureau of Reclamation. As such, he is the head of the Bureau of Reclamation, one of the bureaus of the Department of the Interior.

Affiant has read the bill of complaint in the above-entitled action and is cognizant of the facts alleged therein and states that the allegations contained in said bill of complaint are true to the best of his knowledge.

On August 23, 1934, the Bureau of Reclamation, with the approval of the Secretary of the Interior,

awarded to Six Companies, Inc., a contract for the construction of Parker Dam, the structure referred to in this affidavit and in the bill of complaint in this action. Said contract was let pursuant to specifications No. 574 of the Bureau of Reclamation, and was thereafter duly executed and is now in force.

On September 10, 1934, the contractor, Six Companies, Inc., was directed to proceed with the work, and construction was commenced. Parker Dam, as described in said specifications 574, is to be a concrete and steel structure located in the Colorado River about 13 miles above the Town of Parker, Arizona, and about 150 miles below the dam referred to in the bill of complaint as Boulder Dam. The construction of Parker Dam requires building of coffer dams, excavation of the river bed of the Colorado River to a depth of about 240 feet in order to establish the foundation on bed rock, and the excavation of diversion tunnels in Arizona at approximately the low-water level of the river. The river at that point is about 400 feet wide. The successful completion of this work requires complete control of the flow of the Colorado River. The period of construction of subwater works at Parker Dam, and the diversion tunnels, is accordingly determined by the period required for filling of Boulder Dam.

After construction work had been initiated at Parker Dam, and while said dam was actually under construction, the State of Arizona, acting

through its Governor, on November 7, 1934, and dates following, threatened, by the use of force, in the manner described in Paragraph XII of the bill of complaint, to stop and prevent further construction. Upon receipt by the Department of the Interior of advices that the Governor had dispatched armed forces to the dam site to carry out said threats, the Department ordered that work on the Arizona side of the river cease. To date this stoppage of work has meant a loss of about two and one-half months on the construction schedule of Parker Dam, during the most favorable construction months in that climate, and during the most advantageous water conditions in the river. It is imperative that work be resumed at once. Great loss and damage will result from further interruption in the progress of work on Parker Dam during this winter, because the Government is now ready to begin impounding water in Boulder Dam Reservoir and is in a position to completely control the release of water therefrom, and thus largely control the amount of water which has to be contended with in placing the deep foundations of Parker Dam. These favorable conditions will continue only for a limited time. The pouring of concrete in the main structure of Boulder Dam will be completed in February 1935, and power generation will be commenced in the fall of 1935, necessitating at that time the resumption of large discharges of water for the generation of power and satisfaction of irrigation and flood-control requirements as

specified in the Boulder Canyon Project Act. During the winter and spring months work on Parker Dam can proceed more rapidly and efficiently than during the summer season because of the climatic conditions at the site of the dam; the intense heat of summer seriously interferes with construction operations.

The contractor is now on the ground with large and costly equipment, ready to continue the construction of said dam.

Affiant is informed that the court has made process returnable in this case April 1, 1935. Unless a restraining order is issued, or other appropriate action taken to permit an immediate resumption of the work, in affiant's opinion the delay attendant upon awaiting final decision in this case prior to issuance of a permanent injunction will not only seriously enhance the cost of construction, but will greatly increase the hazard and risk of building the dam, because of the necessity of constructing it while the flow of the Colorado River is being impounded at Boulder Dam and before large quantities of water are released therefrom.

(Sgd.) ELWOOD MEAD.

Subscribed and sworn to before me this 16th day of January 1935.

(Sgd.) SOL ROTHBARD,
Notary Public, District of Columbia.

My commission expires Feb. 1, 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1935

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 18, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ARIZONA, DEFENDANT

AFFIDAVIT OF HAROLD L. ICKES, SECRETARY OF THE INTERIOR, IN SUPPORT OF THE APPLICATION

DISTRICT OF COLUMBIA, *ss:*

HAROLD L. ICKES, Secretary of the Interior, being first duly sworn, deposes and says that:

He is the Secretary of the Interior and has held that office since the 4th day of March 1933. He is also the Federal Emergency Administrator of Public Works and has held that office since July 8, 1933. As part of a reclamation project undertaken pursuant to the authority of the reclamation law (act of June 17, 1902, 32 Stat. 388, as amended), and also as part of the comprehensive program of Federal Public Works, undertaken pursuant to Title II of the National Industrial Recovery Act (48 Stat. 195), he did, on August 25, 1934, execute on

behalf of the United States a contract with Six Companies, Inc., whereby it was agreed that the company would construct for the United States across the Colorado River at a point about 18 miles upstream from Parker, Arizona, a large monolithic concrete dam. The eastern abutment of said dam will rest upon public lands of the United States in the State of Arizona and its western abutment will rest upon unsurveyed public lands in the State of California. The aforesaid contract is now in force. On September 10, 1934, the contractor, Six Companies, Inc., was directed to proceed with performance of its contract, and construction work was commenced. In addition to the contract work the United States has engaged at the dam site a large number of employees who are supervising and assisting in the contract work and in other work at the dam site.

The State of Arizona has made great efforts to prevent the development of the Colorado River Basin which has been undertaken pursuant to the laws of the United States, including the Boulder Canyon Project Act (45 Stat. 1063); and in litigation before this Court failed in a suit to enjoin construction of Boulder Dam as an alleged interference with said State's alleged water rights. (*Arizona* v. *California*, 283 U. S. 423.) Subsequent to its failure in the aforesaid litigation before this Court, the State of Arizona has negotiated with affiant for a contract between the United States and the State of Arizona for the delivery of water from Boulder

Dam Reservoir. Negotiations for said contract are still under way.

On November 7, 1934, the Governor of the State of Arizona telegraphed to affiant to the effect that construction of Parker Dam without the consent of the State of Arizona would be a trespass upon the rights of that State, that the State of Arizona had not consented to the construction and would not so consent until its rights in the waters of the Colorado River had been settled to the satisfaction of said State. In said telegram the said Governor threatened to use all means and force at his command to stop and prevent construction in Arizona of Parker Dam, unless the consent of said State was first obtained. On November 10, 1934, said Governor proclaimed martial law in that part of the State of Arizona neighboring Parker Dam, and dispatched troops to carry out the threat conveyed by the aforesaid telegram. Affiant verily believes that the Governor of Arizona, in taking said action, was cognizant of the great and irreparable injury, hereinafter described, which the United States would suffer if construction work on Parker Dam was stopped. The said action of the State of Arizona had the effect of an attempt to coerce the affiant into executing a proposed water-delivery contract with Arizona. If executed, said proposed contract would, perhaps, have given to the State of Arizona some of the rights to waters of the Colorado River which said State had attempted but

failed to establish in the aforesaid litigation before this Court. Affiant could not and would not act precipitately upon the said proposed contract, particularly since the other States of the Colorado River Basin vigorously protested against execution of it and sought a hearing on their protests.

Under the State of Arizona's aforesaid threat of imminent armed interference with construction of Parker Dam, affiant suspended construction work in Arizona; and because of the continued threat of imminent, armed interference has been unable to resume said work.

A temporary restraining order or other appropriate action to relieve the United States from Arizona's interference with construction of Parker Dam, for which order or action application has been made to this Court in the above-entitled case, will not injure any known property right of the State of Arizona or of its residents or citizens.

The construction of Parker Dam will in no way affect whatever water rights the State of Arizona may have in the waters of the Colorado River. The right of the Metropolitan Water District of Southern California to divert water from the Colorado River is not dependent upon the construction of Parker Dam, but may be exercised in the absence of said construction and at places on the Colorado River other than at Parker Dam. Furthermore, construction of Parker Dam, instead of adversely affecting the interest of the State of Arizona in the waters of the Colorado River, will make phys-

ically possible the diversion of said waters for use on lands in Arizona.

The State of Arizona, its residents and citizens own no real or personal property along the Colorado River at the Parker Dam site nor in the vicinity of the proposed dam. All of the land on the Arizona bank and riparian to the Colorado River is owned and reserved by the United States and neither the State, nor any of its residents or citizens have any interest or property right therein. None of the property of the State or of its residents or citizens, therefore, will in any way be injured or adversely affected by the construction of Parker Dam. On the contrary, the construction of Parker Dam will make possible the generation of electricity for use in Arizona at a low cost and will make possible the reclamation of large areas of land in Arizona belonging to the United States, the State of Arizona and others.

The affiant further deposes, on information and belief, that the State of Arizona asserts some claim to the bed of the Colorado River where Parker Dam is being constructed, at which point the Colorado River is navigable. The only land of the State of Arizona or of its residents or citizens which could possibly be affected by the construction in Arizona of Parker Dam is the bed of the river to the thread of the stream which is the boundary between the States of California and Arizona.

If this Court grants in the above-entitled case a temporary restraining order or other appropriate

relief, as applied for by the United States, thereby permitting resumption of the construction of Parker Dam, the only construction work which can be done pending final decision in the above-entitled case is that required in the building of cofferdams, excavation of the river bed of the Colorado River to a depth of about 240 feet in order to establish the foundation of Parker Dam upon bedrock, and the excavation in Arizona (in land belonging to the United States) of diversion tunnels at approximately the low-water level of the river, all of which construction work can be abandoned without any damage to the river or the bed thereof.

In event the State of Arizona should finally prevail in the above-entitled case, construction work, pending final decision, cannot, therefore, result in more than mere nominal damages to the State of Arizona.

Distinguished from the mere nominal damages which the State of Arizona may possibly suffer, in event the said relief applied for is granted, the United States will certainly suffer, unless said relief is granted, great and irreparable injury. Unless said relief is granted, the subwater construction work on Parker Dam will be carried on at a great increase in cost, time required for construction, and risk to life and property.

Parker Dam, as described in Specifications No. 574 of the Bureau of Reclamation, pursuant to which the aforesaid contract was let and executed, is to be a concrete and steel structure located in

the Colorado River about 18 miles above the Town of Parker, Arizona, and about 150 miles below Boulder Dam. Construction of Parker Dam requires the subwater work of building cofferdams, excavation of the river bed of the Colorado River to a depth of about 240 feet in order to establish the foundation upon bedrock, and the excavation of diversion tunnels in Arizona at approximately the low-water level of the river. In order to complete successfully this work, above described, the flow of the Colorado River must be completely controlled; and this flow can be completely controlled only if it is small and constant.

The flow of the Colorado River at the Parker Dam site will be small and constant only during the period required for filling Boulder Dam reservoir. The Government is now ready to begin impounding water in Boulder Dam Reservoir and is now in a position to control completely the release of water therefrom. Power generation at Boulder Dam will be commenced in the fall of 1935, however, necessitating from that time on large discharges of water from the dam into the river for the generation of power and for the satisfaction of irrigatoin and flood-control requirements specified in the Boulder Canyon Project Act.

Unless the subwater work involved in construction of Parker Dam can be done during the period required for filling Boulder Dam Reservoir, the cost of constructing Parker Dam will be vastly in-

creased by reason of the expense involved in controlling the large flow of water which will be present in the river at Parker Dam after power generation is commenced at Boulder Dam.

Furthermore, foundation work carried on after the flow of water is increased in the fall of 1935 would involve risk to life and property far in excess of the risk involved in such work when carried on while the flow of water is low and constant. The construction plan of the dam requires an excavation across the bed of the river to a depth of about 240 feet. Men and machinery used in this excavation work are in a dangerous position; and the danger to said men and machinery greatly increases as the flow of the river increases.

In addition, work on Parker Dam can proceed more rapidly and efficiently during the winter and spring months than during the summer season because of climatic conditions at the site of the dam, since the intense heat of summer there seriously interferes with construction operations.

In order to minimize the cost and period of construction and the risk to life and property involved in construction, work was commenced in the fall of 1934. The requisite cofferdams and diversion tunnels must be completed before the aforesaid excavation for the foundation of the dam can be commenced. The interference of the State of Arizona, resulting in stoppage of the work, has, however, caused a loss of about 2½ months on the construction schedule of Parker Dam, during the most fa-

vorable construction months in the climate of the dam site, and during the most advantageous natural water conditions in the river. It is imperative that work be resumed at once, for if it is not it will be impossible to complete the foundation work before the fall of 1935 when large discharges of water from Boulder Dam Reservoir will increase the flow of the river at the Parker Dam site, thereby increasing the cost and time of construction and the risk to life and property involved in said construction.

In addition to the aforesaid irreparable injury, the United States, if construction of Parker Dam is further delayed, may become liable to Six Companies, Inc., for damages for failure to furnish to its contractor for Parker Dam an unimpeded right-of-way for construction purposes.

All of the carefully coordinated engineering plans for construction of Parker Dam are being disrupted by the passing of time, due to the armed interference of the State of Arizona directed against the United States and its officers, agents, employees, and contractors, for the said interference prevents the United States from proceeding with the work on Parker Dam in the orderly manner planned. Each day of delay in construction increases the great and irreparable injury which the United States is suffering.

The unusual and favorable conditions, created by the commencement at this time of the storage

of the river flow in Boulder Dam Reservoir and the complete control of the water in the river below said reservoir until development of power begins at Boulder Dam, can never be reproduced.

HAROLD L. ICKES.

Subscribed and sworn to before me this 17th day of January 1935.

[SEAL] FRANK JONES,

Notary Public, District of Columbia.

My commission expires January 10, 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1935